

REMARKS

Claims 7, 9-10 and 12-49 are pending in this application. By the Office Action, claims 1-6 and 21-49 are withdrawn from consideration; claim 13 is rejected under 35 U.S.C. §112; and claims 7-20 are rejected under 35 U.S.C. §102. By this Amendment, claims 1-6, 8 and 10 are canceled without prejudice to or disclaimer of the subject matter therein, and claims 7 and 13 are amended. Support for the amendment to claim 7 can be found in claims 8 and 11 as filed, as well as in the specification as originally filed, for example at paragraphs [0018] and [0051]. Support for the amendment to claim 13 can be found in the specification as originally filed, for example at paragraph [0024]. No new matter is added by these amendments.

I. **Information Disclosure Statement**

An Information Disclosure Statement with Form PTO-1449 was filed on January 29, 2004. On the copy of the Form PTO-1449 returned with the Office Action, a German language reference was crossed out, indicating that it had not been considered of record. The Office Action fails to indicate why the reference was not considered.

Applicants respectfully submit that the non-consideration of the reference was improper. Applicants submitted the reference in accordance with their duty of disclosure under 37 C.F.R. §1.56 and §1.97. According to 37 C.F.R. §1.98, the Information Disclosure Statement must contain "a concise explanation of the relevance" of each non-English language document. However, that concise statement of relevance "can be either separate from the specification or incorporated therein." 37 C.F.R. §1.98(a)(3). Applicants are in no way required to obtain and provide English language translations of any non-English language documents. Furthermore, where the references are cited in a search report in a counterpart foreign application, "the requirement for a concise explanation can be satisfied by submitting an English-language

version of the search report or action which indicates the degree of relevance found by the foreign office." MPEP §609A(3).

Applicants fully satisfied these duties, and therefore the reference must be considered. In particular, the Information Disclosure Statement clearly indicated that the relevance of the German reference was discussed in the search report attached thereto.

The Examiner is respectfully requested to consider the disclosed information, and initial and return to Applicants a copy of the Form PTO-1449 indicating that the reference has been considered of record. For the Examiner's convenience, attached hereto is a copy of the Form PTO-1449.

II. Restriction Requirement

Claims 1-6 and 21-49 are withdrawn from consideration as subject to a Restriction Requirement. By this Amendment, non-elected claims 1-6 are canceled. The Restriction Requirement is respectfully traversed as to non-elected claims 21-49.

Applicants submit that elected Groups II and non-elected Group III should be examined together. According to MPEP §803, there are two requirements that must be met before a proper Restriction Requirement may be made. These two requirements are: "The inventions must be independent . . . or distinct as claimed; and there must be a serious burden on the Examiner if restriction is not required . . . " (emphasis added). Applicants respectfully submit that the Office Action has failed to establish the second requirement set forth in MPEP §803, that a serious burden exists on the Examiner if restriction is not required between the Groups of claims.

Applicants respectfully submit that a search for the subject matter of Group II would be commensurate with a search for the subject matter of Group III. Accordingly, search and examination of the subject matter of Group II would encompass a search for the subject matter of Group III, and any additional search would not impose a serious burden upon the Examiner.

It is therefore respectfully asserted that the search and examination of the entire application could be made without serious burden. MPEP §803 states that "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions." (Emphasis added). Because Applicants have elected Group II, directed to a microencapsulated material, the further search and examination of Group III, directed to a method of forming the microencapsulated material of Group II, would not place a serious burden upon the Examiner.

For at least these reasons, and in order to avoid unnecessary delay and expense to Applicants and duplicative examination by the Patent Office, it is respectfully requested that the Restriction Requirement between Groups II and III be reconsidered and withdrawn.

Furthermore, where product and process claims are presented in the same application, Applicant may be called upon under 35 U.S.C. §121 to elect claims to either the product or process. MPEP §821.04. However, in the case of an elected product claim, rejoinder will be permitted when a product claim is found allowable and the withdrawn process claim depends from or otherwise includes all the limitations of an allowed product claim. Id.

In the present application, the method claims of Group III include all of the limitations of the product of Group II. In particular, all of the limitations of the independent product claim 7 of Group II are incorporated into the method of Group III.

Since the method claims of Group III include the limitations of the product claims of Group II, the method claims must be rejoined with the product claims once the product claims are allowed. Thus, to streamline prosecution and avoid delay, the Restriction Requirement should be withdrawn as between Groups II and III to permit concurrent examination of all of the pending claims. Applicant respectfully requests reconsideration and withdrawal of the Restriction Requirement.

III. Rejection Under §112

Claim 13 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite. The Office Action argues that it is unclear whether the recited additive is contained in the core or the shell. Applicants respectfully traverse this rejection.

By this Amendment, claim 13 is amended to clarify that the shell component further comprises the at least one additive. Accordingly, claim 13 satisfies the requirements of 35 U.S.C. §112, second paragraph, and is not indefinite. Reconsideration and withdrawal of the rejection are respectfully requested.

IV. Rejection Under §102

Claims 7-20 are rejected under 35 U.S.C. §102(b) over Munteanu. Applicants respectfully traverse this rejection with respect to the amended claims.

Claim 1, as amended, is directed to a microencapsulated material, comprising: a core component, wherein said core component is at least one of oxygen sensitive or water sensitive; and a shell component encapsulating said core component, wherein said shell component comprises a polymer material and a structuring agent, wherein said polymer material comprises pendant ionic groups that form an ionic bridge with said structuring agent, wherein said structuring agent decreases oxygen or water permeability through said polymer material. Such a microencapsulated material is not disclosed in Munteanu.

Munteanu discloses hydro-alcohol compositions such as colognes, after-shave lotions, after-bath preparations and splash lotions, which yield continuously high fragrance intensity release, evenly and uniformly over an extended period of time and which can be adapted to yield differing aromas from a qualitative and quantitative standpoint in a controllable manner. The hydro-alcohol compositions contain a mixture of (i) a non-confined fragrance composition; (ii) one or more fragrance oils which are physically entrapped in one or more types of solid particles and (iii) a suspending agent such as hydroxypropyl cellulose, silica,

xanthan gum, ethyl cellulose or combinations of the previously mentioned four substances; the non-confined fragrance substance, the entrapped fragrance oil and the suspension agent being premixed prior to the subsequent creation of the hydro-alcohol compositions.

Munteanu at Abstract.

However, Munteanu fails to disclose the claimed invention. Munteanu at least fails to disclose the specific shell materials required by the claimed invention. That is, Munteanu fails to teach that the microcapsule shell should be formed from (1) a polymer material and (2) a structuring agent, where the polymer material comprises pendant ionic groups that form an ionic bridge with the structuring agent. At most, the reference appears to teach that a coating layer or shell is formed from a suspending agent such as hydroxypropyl cellulose, silica, xanthan gum, ethyl cellulose or combinations thereof, covering a core formed of a non-confined fragrance composition; and one or more fragrance oils which are physically entrapped in one or more types of solid particles. Nowhere does Munteanu teach that the shell components should specifically be a polymer material and a structuring agent, nor does Munteanu teach that these two materials ionically interact with each other, to provide ionic bridges between the components.

Furthermore, Munteanu does not teach that the thus-formed ionic bridges provide the required decrease in oxygen or water permeability, which is provided by the claimed invention. See, for example, paragraphs [0018], [0033] and [0051] of the specification. Munteanu does not teach that the shell components, and the resultant ionic bridges, decrease oxygen or water permeability through the shell to protect the core component.

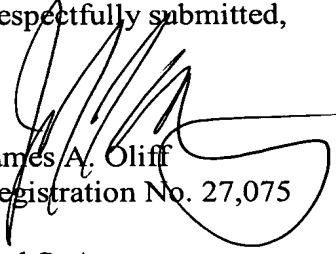
For at least these reasons, the claimed invention is not anticipated by Munteanu. Reconsideration and withdrawal of the rejection are respectfully requested.

V. Conclusion

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance of the application are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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Enclosure:

January 29, 2004 Form PTO-1449

Date: January 12, 2006

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